

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRAVIS L. EDWARDS

Claimant

VS.

LOWES OF WICHITA

Respondent

AND

LUMBERMENS MUTUAL CASUALTY CO.)

Insurance Carrier

Docket No. 1,015,600

ORDER

Respondent and its insurance carrier request review of the May 11, 2004 preliminary hearing Order entered by Special Administrative Law Judge Vincent L. Bogart.

ISSUES

The Special Administrative Law Judge (SALJ) found claimant suffered accidental injury arising out of and in the course of his employment with respondent. The SALJ authorized Dr. Eustaquio Abay as claimant's treating physician.

The respondent requests review of whether the SALJ erred in finding the claimant's accidental injury arose out of and in the course of employment. Respondent argues that claimant's condition is the result of a natural progression of a previous back injury claimant had suffered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant suffered an injury to his back on November 8, 2001 and filed claims against both U.S.D. #259 and the respondent because at that time he worked for U.S.D. #259 and also worked part-time for respondent. Claimant had suffered a herniation at L4-5 and ultimately a discectomy was performed in July 2002 by Dr. Eustaquio Abay. An Award was entered which determined claimant suffered an accidental injury arising out of his

employment with U.S.D. #259 and further determined that claimant's employment with respondent neither caused nor contributed to his back injury.¹

Claimant did not return to work for U.S.D. #259. In October 2002, claimant returned to light-duty work for Lowe's in the hardware section. His job duties included handling small packages, nuts, bolts and screws. Although claimant had been restricted from lifting in excess of 45 pounds he testified that he did occasionally lift more than that weight when he returned to full-time employment with respondent in November 2002. In the spring of 2003, he began to experience pain when he overexerted himself and the pain gradually increased in severity over time and then reached a level where, although it neither worsened nor improved, it did not return to the condition it was when he first returned to work.

Claimant testified that he has not had a specific injury but that it's been a gradual process. Claimant attributes the increase in his low back pain and numbness in his legs to his work activities with respondent. Claimant now has a constant pain in his right leg and a tingling or numbness in his left leg which he didn't have before he returned to full-time work. And claimant testified that his left leg symptoms are now more severe than before he had surgery.

Dr. Henry D. Do performed a court ordered independent medical examination of claimant on December 8, 2003. Dr. Do ultimately concluded that claimant's increase in symptoms was the direct result of his employment with respondent.²

In general, the question of whether the worsening of claimant's preexisting back condition is compensable as a new, separate and distinct accidental injury under workers compensation turns on whether claimant's subsequent work activity with the respondent aggravated, accelerated or intensified the underlying disease or affliction.³

The claimant testified that after he returned to full duty work with respondent his back symptoms gradually increased and worsened. Dr. Do concluded claimant's employment activities with respondent caused claimant's increased symptoms. The Board finds that claimant's work for respondent was the cause of claimant's back condition at the time of the preliminary hearing and affirms the SALJ's Order.

WHEREFORE, it is the finding of the Board that the Order of Special Administrative Law Judge Vincent L. Bogart dated May 11, 2004, is affirmed.

¹ P.H. Trans., Cl. Ex. 2.

² P.H. Trans., Cl. Ex. 1.

³ See *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469, rev. denied 265 Kan. 884 (1998).

IT IS SO ORDERED.

Dated this _____ day of July 2004.

BOARD MEMBER

- c: Stephen J. Jones, Attorney for Claimant
 Michael T. Halloran, Attorney for Respondent and its Insurance Carrier
 Jon L. Frobish, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director